



05 SEP 2006

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In re Application of: AUST
Application No.: 10/553,136
PCT Application No.: PCT/EP04/03858
Int. Filing Date: 13 April 2004
Priority Date Claimed: 15 April 2003
Attorney Docket No.: 016273-00600
For: METHOD FOR MONITORING AT LEAST
TWO PEOPLE CARRYING AN EXTERNAL
RESPIRATORY AIR SUPPLY

DECISION ON
PETITION UNDER
37 CFR 1.137(b)

This is a decision on the "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally under 37 CFR 1.137(b)," filed 30 June 2006.

BACKGROUND

On 13 April 2004, applicant filed international application PCT/EP04/03858. The international application claims a priority date of 15 April 2003 and designates the United States. Accordingly, the thirty-month period for commencement of the national stage in the United States and paying the basic national fee expired at midnight on 17 October 2005 (15 October 2005 being a Saturday).

On 14 October 2005, applicant filed a copy of the international application as required by 35 U.S.C. 371(c)(2), but did not include the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and 37 CFR 1.495(b)(2). Accordingly, this international application became abandoned with respect to the United States at midnight on 17 October 2005 for failure to pay the basic national fee.

On 30 June 2006, applicant filed the instant petition for revival accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a translation of the international application as required by 35 U.S.C. 371(c)(2), and the petition fee of \$750.

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) the required reply, (2) the petition as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Petitioner's statement that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirements of 37 CFR 1.137(b)(3). The submission of the national fee and the copy of the international application satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). A terminal disclaimer is not required because the application was filed on or after 08 June 1995. Therefore, the requirements for a grantable petition under 37 CFR 1.137(b) have been satisfied.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is GRANTED as to the National Stage in the United States of America.

The application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing in accordance with this decision, including the issuance of a Notification of Missing Requirements (PCT/DO/EO/905) indicating that an executed oath or declaration of the inventor is required, in compliance with 37 CFR 1.497(a) and (b).



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